

Edo Western and its workers' compensation insurance carrier, American Protection (referred to jointly as "Edo" hereafter) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to O. W. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUES PRESENTED**

On January 9, 2003, Mrs. W. filed an application for hearing to compel Edo to pay workers' compensation benefits for back injuries allegedly caused by Mrs. W.'s work at Edo. After an evidentiary hearing on October 14, 2003, Judge Marlowe issued her decision on July 29, 2004, awarding benefits to Mrs. W..

Edo now challenges Judge Marlowe's decision on three points:<sup>1</sup> 1) Judge Marlowe improperly evaluated Mrs. W.'s claim as an occupational disease claim, instead of as an industrial accident claim; 2) A medical panel should be appointed to consider disputed medical issues; and 3) Mrs. W. failed to prove that her work at Edo is the medical and legal cause of her back injuries.

### **FINDINGS OF FACT**

The Appeals Board adopts Judge Marlowe's findings of fact, which can be summarized as follows.

Mrs. W. began work at Edo in 1990. Her duties required lifting and carrying boxes of various materials to her work station. Each box weighed 30 to 35 pounds and was carried a distance of 5 to 20 feet. Mrs. W. lifted and carried 30 to 35 of these boxes each shift.

During March 1999, Mrs. W. began seeking medical attention for low back pain. This back pain worsened over the next several months and by mid-1999 she was diagnosed with mild multi-level degenerative disc disease. On November 23, 2000, she experienced an episode of significant back pain as she lifted a box at work. This pain continued and a few weeks later Mrs. W. sought additional medical attention. Subsequent radiological studies again revealed degeneration at the L5-S1 spinal level and a bulging disc at the L4-5 level.

Dr. MacFarlane, one of Mrs. W.'s treating physicians, believes Mrs. W.'s disc disease was caused by her repetitive work duties at Edo. Dr. Moress, Edo's medical consultant, states that the episode of more intense pain Mrs. W. experienced on November 23, 2000, was a permanent aggravation of her pre-existing disc disease.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Edo has raised three objections to Judge Marlowe's decision in this matter. Each of those objections is addressed below.

Analysis of Mrs. W.'s claim as an occupational disease. Edo contends that Judge Marlowe mistakenly evaluated Mrs. W.'s claim under the Utah Occupational Disease Act when it should have been evaluated under the Workers' Compensation Act. Having reviewed Judge Marlowe's decision, it is apparent to the Appeals Board that Judge Marlowe did, in fact, evaluate Mrs. W.'s claim as a workers' compensation claim for injuries caused by cumulative trauma. The Appeals Board therefore rejects Edo's argument on this point.

Need for medical panel. Edo contends a medical panel should be appointed to resolve purported differences in the medical opinions of Dr. McFarland, Mrs. W.'s physician, and Dr. Moress, Edo's consulting physician. In summary, Dr. MacFarlane believes Mrs. W. developed back injuries from her years of lifting at Edo. Dr. Moress believes the acute symptoms Mrs. W. experienced on November 23, 2000, were an aggravation of her pre-existing injuries. The Appeals Board views the two physicians' opinions as generally consistent with each other. Because there is no significant medical controversy, the Appeals Board concludes that no medical panel is required.

Causation. Edo argues that Mrs. W.'s work at Edo is neither the legal cause nor the medical cause of her injuries. On the question of whether Mrs. W.'s work at Edo was the medical cause of her back injuries, the Appeals Board has already noted that the opinions of Dr. McFarland and Dr. Moress establish the requisite medical causal connection. The Appeals Board therefore turns to the requirement of "legal causation."

In Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of non-employment life." . . . . The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted.)

The mere fact that an injured worker suffers from a pre-existing condition does not necessarily trigger the application of the more stringent prong of the Allen test for legal causation. For example, in Fred Meyer v. Industrial Commission, 800 P.2d 825, 828 (Utah App. 1990), the Utah Court of Appeals held that the more stringent test for legal causation **does not apply** if the pre-existing condition was itself caused by work in the same workplace. In Mrs. W.'s case, the evidence establishes that her back injuries arose from her work at Edo, rather than out of her non-work life. Consequently, the more stringent legal causation test does not apply to her claim and her work duties at Edo are sufficient to establish legal causation.

As a final point, the Appeals Board notes the opinions expressed by Dr. France, Edo's consulting biomedical engineer. However, with respect to questions of medical causation, the Appeals Board finds the opinions of Dr. Moress and Dr. McFarland persuasive. On the question of

legal causation, Dr. France's evaluation of workplace stresses and exertions is not relevant, since Mrs. W. is not required to satisfy the more stringent prong of the test for legal causation.

**ORDER**

The Appeals Board affirms Judge Marlowe's decision and denies Edo's motion for review. It is so ordered.

Dated this 31<sup>st</sup> day of March, 2005.

Colleen S. Colton, Chair  
Patricia S. Drawe  
Joseph E. Hatch

1. The Appeals Board has reordered Edo's arguments into a more logical sequence.